



ATTORNEYS AT LAW

December 29, 2004

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NH Water Council
C/O Michael Sclafani, Appeals Clerk
29 Hazen Drive
PO Box 95
Concord, NH 03302-0095

**RE: Notice of Appeal of Administrative Order No. WD 04-001 filed herewith
Docket #: 04-05WC]**

Motion to Dismiss

Ladies and Gentlemen:

Freudenberg-NOK General Partnership through its attorneys, Stebbins, Lazos & Van Der Beken, PA, has previously filed a Notice of Appeal from the above referenced Administrative Order with the New Hampshire Water Council.

On behalf of Freudenberg-NOK, we request that the Council dismiss the Administrative Order based on the following:

A title search has determined that the title to the Upper IPC Dam #031.03 may have been transferred to the State of New Hampshire by action at law pursuant to the terms of two (2) Quitclaim Deeds dated December 22, 1964 from (i) Public Service Company of New Hampshire to International Packings Corporation recorded at Book 1013, Page 44 of the Grafton County Registry of Deeds ("IPC Deed"), and from (ii) Public Service Company of New Hampshire to The State of New Hampshire recorded at Book 1012, Page 544 of said Registry ("State Deed"). The basis for this determination is the provision in the IPC Deed in which the Public Service Company expressly conditioned the transfer of title of the dam to the obligation to maintain the production of electricity at the dam. This so-called "right of reverter" was conveyed to the State of New Hampshire by the State Deed at Book 1012, Page 544.

After review of the title materials, the New Hampshire Attorney General's Office on behalf of the New Hampshire Department of Environmental Service, Water Division, has

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claimed that the transfer of rights to the State of New Hampshire in the State Deed was not effective. We dispute that claim and determination.

Notwithstanding said claim, the ownership of the right of reverter does not have any effect on the fact that the condition subsequent has occurred.

Freudenberg-NOK believes that as a result of its discontinuance of electricity generation after April 2002 that, effective 12 months from such discontinuance (i.e., after April 2003), title transferred by action at law to the holder of the right of reverter, which is either the State of New Hampshire or to the Public Service Company of New Hampshire.

Consequently, the title in the dam now resides in the State of New Hampshire or the Public Service Company of New Hampshire and not Freudenberg-NOK. The issue of ownership of the dam is properly one between the State of New Hampshire and Public Service Company of New Hampshire. This renders the Administrative Order moot and unnecessary as it may apply to Freudenberg-NOK.

Therefore, we respectfully request that the Council dismiss the Administrative Order against Freudenberg-NOK.

Sincerely,
Freudenberg-NOK General Partnership
By its Attorneys
Stebbins, Lazos & Van Der Beken, PA

COPY

By: Nicholas J. Lazos
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CC: Anthony Blankinsop, Esquire
NH Department of Justice
James Gallagher, Jr. PE
Chief Water Resource Engineer
Robert Evans, Esquire

Certificate of Service

I hereby Certify that a copy of the foregoing Motion to Dismiss was send this 29th day of December, 2004 first class mail, postage prepaid to Anthony Blankinsop, Esquire and James Gallagher, Jr. PE.

COPY
Am. Van [unclear]
Nicholas J. Lazos

Nicholas J. Lazos